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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

NOS. 1278 and 1279

JOHN B. WOOTTEN; and JOHN B. WOOTTEN as Trustee under the Last Will and Testament of R. K. WOOTTEN, Deceased,

Petitioner
Appellee below

vs.

CARL EKLUND WOOTTEN, a Minor, by and through his Mother and Next Friend, VENDLA E. WOOTTEN;

Respondent
Appellant below

and

JOHN B. WOOTTEN; and JOHN B. WOOTTEN, as Trustee under the Last Will and Testament of R. K. WOOTTEN, Deceased,

Petitioner
Appellee below

vs.

VENDLA E. WOOTTEN,

Respondent
Appellant below

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

STATEMENT OF THE CASE

These consolidated cases were before the Circuit Court of Appeals, Tenth Circuit, on two occasions. The actions were filed in the United States District Court for the District of

New Mexico, motions to dismiss were sustained, and appeals were taken to the Circuit Court of Appeals, where the principles now complained of were first announced and the causes reversed and remanded. (See *Wootten* v. *Wootten*, 151 Fed. 2d. 147). After remand the cases were tried upon their merits, and the District Court found for the Defendant below, Petitioner herein. Again appeal was had to the Circuit Court of Appeals, where the judgment and decision of the District Court was reversed and the causes remanded with direction. (*Wootten* v. *Wootten*, 159 Fed. 2d, 267). Thereupon Petitioner filed his Petition for Certiorari.

The statement of facts contained in Petitioner's brief we think incomplete and inadequate for a clear understanding of the issues presented; and accordingly we submit the following statement of facts, and as pointed out by the Circuit Court the material facts are not in dispute.

Prior to July 30, 1936, R. K. Wootten was the owner and operator of certain ranch properties situated in New Mexico, consisting of land, range cattle, horses, milk cows, and ranch equipment. On that date he sold his brother, John B. Wootten, the Petitioner herein, an undivided one-half interest in the properties and, thereafter, *until the death of R. K. Wootten, the brothers were equal partners in the ownership and operation of the ranch* (Tr. p. 53, 105). On July 30, 1936, R. K. Wootten and John B. Wootten entered into a contract with W. R. Ferguson. It provided that Ferguson would manage and superintend the ranch and its operations for a period of six years; that the Woottens would pay him a salary and provide funds for the operation of the ranch; that, in the event the net operating profit for the full term of six years should equal 100 per cent of the total investment during such period, Ferguson should be entitled to an undivided one-third interest in the ranch lands, leases, livestock, and equipment; and that, in the event the net operating profit should not equal 100 per cent, an interest in the ranch properties on the basis of the net profits earned would be transferred to Ferguson at the end of the six-year period. (Tr. pp. 13, 14, 15, 54).

R. K. Wootten died testate January 3, 1938, and left sur-

viving his widow and four young children, who are the Respondents herein. (Tr. p. 54). John B. Wootten, the Petitioner, was named Executor in the Will of his brother; he duly qualified, and continued to act as such. Under the terms of his will, R. K. Wootten devised and bequeathed all of his property to Vendla E. Wootten and her four children in equal shares. The Will directed that, after payment of debts, taxes, and administration expense, the Executor should distribute to Vendla E. Wootten her share of the property and should distribute the remainder to himself as trustee for the four children; it provided that the share of each child should constitute a separate trust, that the trustee should have full power and authority to sell, transfer, assign, convey, and dispose of any property of any of the trusts, and to invest and reinvest the money and funds of each separate trust in the exercise of his judgment and discretion, and that the trustee should distribute and deliver to each child all of the property in his or her respective trust when he or she arrived at the age of 25 years; it further directed the Executor to make final distribution of the estate to Vendla E. Wootten and John B. Wootten, as trustee, within five years after the death of R. K. Wootten. (Tr. p. 19). After the death of his brother, the Petitioner formulated a plan, which was carried out, to create a corporation and to transfer all of the ranch properties to such corporation. (Tr. p. 105). In December, 1939, John B. Wootten, acting for himself individually, as Executor of the estate, and as trustee for the children, entered into a contract with Vendla E. Wootten and the manager, Ferguson, whereby they agreed to create such corporation. The stock was to go one-third to the Petitioner individually and one-third to his deceased brother's family, under the estate and trusts; thus preserving the *partnership equality of interest*. The remaining one-third was to be retained by the corporation for fulfillment of the contract with Ferguson. (Tr. p. 26). By this incorporation the Petitioner changed the nature of his beneficiary's holdings from undivided interests in land and the business into shares of stock in a corporation.

A controversy later arose between the Petitioner and Ferguson as to the interest in the ranch properties that Ferguson was entitled to receive under his contract, and Ferguson brought an action in a State Court of New Mexico. On December 4, 1942, a decree was entered in that case, which adjudged that Ferguson was entitled to receive 570 shares of stock, and the balance of the one-third set aside for him was to go to the Woottens pro rata, thereby maintaining their relative interests. (Tr. p. 29).

Following the entry of such decree, the Petitioner discontinued the services and employment of Ferguson and took over the sole and exclusive operation and management of the corporation and its ranch properties. He was of course so acting individually, as Executor and as an express trustee. (Tr. p. 165).

Prior to January 15, 1944, the Petitioner began negotiations with Ferguson to purchase the latter's stock. Ferguson had disposed of 34 shares of the stock issued to him. John B. Wootten consummated the purchase of the remaining 536 shares of the Ferguson stock on January 15, 1944, for $87.50 per share, the purchase being for himself individually, thereby increasing his individual stock holdings to a majority of the corporate stock, and reducing his beneficiaries to a minority position. (Tr. pp. 168, 181, 92).

A firm of certified public accountants made an audit of the corporation's books, covering the period from January 1, 1942, to January 31, 1944. The audit for the period ending January 31, 1944, reflected current liabilities of $12,636.28, long-term liabilities on state land purchase contracts of $20,041.46, and a net worth of $278,251.10. (Tr. p. 211).

The book value of the stock in the corporation was $141.28 per share, January 31, 1943; $152.04, January 31, 1944 and $150.44, January 31, 1945. (Tr. p. 102).

In *January*, 1944, when Petitioner purchased the controlling stock, there were ample cash funds in his hands, as trustee

of the several trusts, to purchase, in behalf of the beneficiaries under the R. K. Wootten trusts, their pro rata share of the Ferguson stock. (Tr. p. 80).

A report of Petitioner, as Executor, filed in the County Court of Grady County, Oklahoma, shows cash on hand in the estate as of April 22, 1943, of $78,159.18. *On December 31, 1943,* the Executor made a partial distribution to the beneficiaries of $60,000. A report filed by the Executor on December 31, 1943, shows a cash balance in the estate, after such distribution, in excess of $30,000.00 (Tr. p. 80), the estate still being open.

The corporation had cash on hand on January 31, 1944 in the amount of $66,287.32. (Tr. pp. 133, 184). Notwithstanding adverse conditions, the net operating profit from cattle on the agreed value of $145,587.50 under the six-year Ferguson contract, amounted to 94 per cent. Moreover, in computing the 94 per cent, there was deducted as operating expenses, 5 per cent per annum on the agreed value of the land and equipment; so that the actual profit for such period was 124 per cent. (Tr. pp. 139, 144). The ranch was very profitable thereafter.

The audit above referred to was completed July 10, 1944. A copy was sent to Vendla E. Wootten and the children on July 14, 1944. Prior to furnishing the audit, John B. Wootten had not furnished Vendla E. Wootten or the children annual reports, trial balances at the end of the fiscal years, or financial statements showing the value of the ranch property, or the financial results from the operation of the ranch. Vendla E. Wootten had no knowledge respecting the value of the ranch property until she received the audit in 1944, which was, of course, after Petitioner purchased the stock which gave him control of the corporation. (Tr. pp. 172, 173, 174, 94.)

Petitioner testified that in 1941 he had a conversation with Vendla E. Wootten respecting the purchase of the Ferguson stock; that she stated she did not desire to buy any for herself; that he told her that, in his judgment, it was not wise to buy any of the stock for the children because it was a closed corporation and a hazardous business; (Tr. p. 87) that

at the time the purchase was consummated, he asked her if she wanted to change her mind about purchasing any of the Ferguson stock and that she replied, "No". (Tr. p. 89) (Tr. p. 112).

John B. Wootten, the Petitioner, admitted that in all of the conversations with Vendla E. Wootten, relative to purchasing the Ferguson stock, he represented that the price was too high and that it was not "a good buy". (Tr. p. 96).

On March 6th, 1944, Vendla E. Wootten wrote a letter to John B. Wootten, in which she stated she had discussed the matter of the Ferguson stock with Richard K. Wootten, Jr., and had decided that she and the children should purchase half of such stock. (Tr. p. 96).

On March 8, 1944, John B. Wootten replied to the letter of March 6th, stating that he was perfectly willing to turn over some of the Ferguson stock to Richard K. Wootten, Jr., and to Vendla E. Wootten, but that it was against his judgment to use trust funds to purchase any of such stock for the other children; that the price was high and that he did not think he should invest the trust funds of the other children in stock of a closed corporation, where there would be few buyers if they should later desire to dispose of the stock. (Tr. p. 221). On March 16, 1944, Vendla E. Wootten wrote a letter to John B. Wootten, in which she stated that since her family and John B. Wootten had been equal partners in the ranch, it should be kept that way; that John B. Wootten should take half of the stock and she and the children should each take one-tenth of the stock, or the remaining one-half. (Tr. p. 222). On March 29, 1944, John B. Wootten wrote a letter to Vendla E. Wootten, in which he stated that the stock could not be divided equally because another person had acquired thirty-four (34) shares of the Ferguson stock, and that it was now too late to divide the remainder of the Ferguson stock because he had made gifts of part of it to his children, sold part of it to his wife, and kept only a small part of it himself; that he did not think it was a proper investment for the children's trust funds and that to have handled the stock the way she suggested would have required approximately $5,000 from her and ap-

proximately $5,000 from each child, and the children did not have money available to purchase the stock. (Tr. p. 223).

Thereafter, in reply to the last mentioned letter, Vendla E. Wootten wrote a letter to John B. Wootten, in which she stated that he was "on the ground floor" and knew about the ranch, the loss or profit resulting from its operation, and the values of the stock, that neither she nor the children had been given a fair opportunity to acquire their share of the Ferguson stock, and she demanded that he should turn over half of the Ferguson stock acquired by him to her and the children; she further states that if it was good enough for his wife and children, it was good enough for her and her children. On April 8, in reply to the letter mentioned last, John B. Wootten wrote Vendla E. Wootten that he did not think that the stock was a good investment for her children, and that they did not have money available to purchase the stock at the time it was required. (Tr. p. 227).

In his letter to Vendla E. Wootten of March 29, John B. Wootten stated "during 1942 and 1943, I had to keep the money in the bank, $60,000.00 lying idle, in order to be prepared to pay off the day we could trade with Ferguson. Just take it for granted that the stock was bought worth the money, which I assure you it was not, I would be entitled to the stock for that reason, if no other." This clearly indicated that John B. Wootten intended all along to purchase the Ferguson stock for himself personally, and not to permit his beneficiaries to participate in such purchases. (Tr. p. 223).

Vendla E. Wootten agreed to the formation of the corporation because John B. Wootten, in whom she had complete trust and confidence, advised her so to do. She was totally inexperienced in business affairs. (Tr. p. 95). She admitted that she had told John B. Wootten, prior to the purchase of the Ferguson stock, that she did not desire to purchase any of the stock individually. She testified, however, that when the matter was discussed with her, John B. Wootten had said: "We will have to buy Ferguson out," and that she thought John B. Wootten would buy half of the stock and the other

half of the stock would be purchased by the estate of R. K. Wootten. (Tr. p. 116).

After his brother's death, the Petitioner continued to operate the ranch as a partnership, and during this period as well as after the incorporation of the ranch, such advances of funds as were necessary were made, one-half by Petitioner individually, and one-half by Petitioner from funds of his brother's estate. (Tr. p. 81-2).

II

ARGUMENT

Summary of the Argument

Point A—The Petitioner here asks for no more than another review of the facts.

Point B—The Circuit Court of Appeals announced no new doctrines, and the governing ones are admitted.

Point C—There is no conflict of decisions to warrant granting of certiorari.

Point A

The doctrines of equity governing the case are established and admitted. The Petitioner here seeks another review of the facts.

We are here concerned with the doctrine of equity relating to the duties of a fiduciary towards his beneficiaries. This is the prohibition against such a fiduciary gaining personal advantage over his beneficiary by reason of his position. Since such a doctrine is grounded upon basic moral precepts, it might be expected that the doctrine is as old as equity itself. As was stated by Lord Chalmsford in the case of *Tate vs. Williamson*, L. R. Chan. App. Cas. 55, at Page 60:

> "The jurisdiction exercised by certain courts of equity over the dealings of persons standing in certain fiduciary relations has always been regarded as one of a most salutory description. The principles applicable to the more familiar relations of this character have long

been settled by many well-known decisions, but the courts have always been careful not to fetter this useful jurisdiction by defining the exact limits of its exercise. Whenever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no confidential relation had existed."

This case and doctrine has been examined and re-examined repeatedly, until today it can not be seriously disputed that it has become an established part of our jurisprudence. We believe that the Petitioner recognizes this fact where, in his brief on Petition for Certiorari (Page 15), he quotes from the decision of Justice Cardozo in the case of *Meinhard vs. Salmon*, 249 N. Y. 458, 164 N. E. 545, 62 A. L. R. 1. The Petitioner further states in his brief, at Page 16, in effect that the requirement of a high standard of honesty in dealings by the trustee is applicable in cases where "the dealings of a trustee are actually with property held in trust, or so connected therewith that the cestui is or may be prejudiced or injured in his property rights by the trustee's action." The doctrine is further quoted by the Petitioner in other cases cited in his brief.

Then if this doctrine is so recognized as a governing principle, a case where it is brought into operation involves not a question of enunciating equitable doctrines, but instead requires an evaluation of the particular facts of the cause in the light of this doctrine. This is what has been already done in the courts below in the case at bar, and there was no dispute that the doctrine mentioned would prevail. The dissenting opinion by Judge Huxman in the Circuit Court on the first appeal of this action, (159 F. (2d) 567) contains a clear recognition that the doctrine we have set forth is the governing one in this action.

From the above outline it is clear that the Circuit Court's

analysis and decision did not involve a determination as to whether or not such a doctrine prevailed, but instead showed that there was agreement that such a doctrine did govern the case at bar, and the issue instead was whether or not the facts of the particular case, as developed during the trial, indicated whether or not the Petitioner had violated his duty to the Respondents, his beneficiaries. Thus, in cases of this character, and especially the one at bar, we have no new legal or equitable principles laid down by the Court.

POINT B

The Circuit Court of Appeals in this action merely decided that from the established facts in this particular case the Petitioner had violated his duty. In so doing, as we have already indicated, the Court enunciated no new doctrines, nor did it expand existing ones. The Court merely determined that the facts proved that the Petitioner had not protected a trust *res*, and that he had gained a personal advantage at the expense of his beneficiaries, that he had withheld information enabling him to actively mislead the Respondents as to values, and further that the Petitioner did actively misrepresent to certain of the Respondents material facts in connection with the transaction in question. The general determination of course being that he did not act in good faith toward those to whom he owed a duty.

The Respondent fails to see how such holdings could be in conflict with any prevailing doctrines of equity. The Circuit Court did not, as the Petitioner would argue, lay down any broad "general propositions of law." The Petitioner in his brief, beginning at Page 16, states in boldface type six "general propositions of law", which he maintains the Court laid down. From the facts indicated above, and from the decision of the Circuit Court, we believe it is apparent that it was not necessary to make any "general propositions of law" nor to lay down any new doctrines to determine that the Petitioner had failed to conform to the standards of conduct required of a trustee.

The Petitioner in his brief, having first stated a "general

proposition of law" which he argues was established by the decision, then builds upon this foundation an argument to the effect that such a general proposition is contrary to two decisions of other Circuits. The Respondent maintains that in the first instance the Court did not lay down such general propositions, and secondly, there is nothing in the decision in conflict with the decisions the Petitioner names.

In the examination of the decision of the Circuit Court, and when reviewing facts of this case, the importance of the early relationship of the parties and the nature of their respective property interests from the outset becomes apparent. Likewise, the several capacities in which the Petitioner appears from time to time, together with his actions throughout the years, must be considered as being closely interrelated, despite the lapses in time. However, in so noting the intervening incidents and methods, it must be remembered that it is the result or cumulative effect upon the Respondent beneficiaries that is the important matter, rather than the particular methods or devices used to achieve such results.

Point C

The Petitioner first states that as a reason for granting his Petition for Certiorari that the decision of the Circuit Court of the Tenth Circuit in the case at bar, is in conflict with the decision of the First Circuit in the case of *Donnelly v. Consolidated Investment Trust*, 99 F. (2d) 185, and likewise in conflict with the decision of the Second Circuit in the case of *Prudential Insurance Company v. Liberdar Holding Corporation*, 72 F. (2d) 395.

To consider first the Prudential Insurance Company case, we find that the Petitioner did not treat the case with any detail in his brief. Instead, he quotes one sentence from it, and then seeks to show that such statement is in conflict with the "general proposition of law" which he believes to have been laid down by the Circuit Court in the case at bar.

This Prudential case is but a small portion of extensive litigation concerning the mortgage certificates issued by the New York Title and Mortgage Company. This particular case,

in the portion thereof with which we are concerned, considered the following rather involved situation which we have summarized as follows:

> The mortgagee had many separate mortgages on many portions of land, pooled the mortgages with a depositary, and then issued mortgage certificates against these pools. These certificates assigned an aliquot share of the pooled mortgages, and guaranteed payment of the face value of the certificate. The certificate holders had only a security interest in the assigned mortgages, and the Company could substitute and withdraw mortgages from the pools.
>
> There were defaults by the mortgagors and a subsidiary of the Company issuing the certificates, effected partial foreclosures of the pooled mortgages under an assignment arrangement, brought in the equities and then reassigned to the Company, which re-deposited mortgages in the pool.
>
> One question in the case being whether the buying in on the partial foreclosures or getting deeds from the mortgagors resulted in a situation where the Company could be regarded as holding the properties in trust for the certificate holders. The Court held not, because even when the land was bought in foreclosure, it was held only as security; the certificate holders were still in the position of mortgagors, and the partial foreclosures did not affect the lien on the mortgage, except that junior liens were eliminated. The Court further held that the lien should not be confused with the land.

In a subsequent decision in the case of *In Re Prudence Bonds* at 102 F. (2d) 531, 534, the Court limited the above decision by stating that the trust *res* involved consisted of the mortgages themselves, and that the dealing by the Defendant in the foreclosure action was with the land itself, and did not prejudice the lien.

Although the above case is advanced by Petitioner as a ground for granting his Petition, the Respondent fails to see wherein it is in conflict with the case at bar. The Court in its decision did state that a trustee was not prohibited from purchasing an interest junior to the trust estate, because such a

purchase could not create an interest adverse to that of his beneficiary. This holding is in fact no more than another statement of the same doctrine which we have heretofore considered as the applicable one to this action. It can not be disputed that the trustee can purchase property, if such purchase could not "possibly create an interest adverse to the *cestui que* trust." This, as we indicated, is no more than a restatement of the general rule, and we again point out that if the doctrine is so established and recognized, the issue in the case is merely whether or not the facts indicate that the trustee has not conformed to the standards of conduct.

The Respondents urge that the Circuit Court, in the case at bar, did not by any means indicate the rule to be otherwise than that the trustee could not acquire an adverse interest. We feel that the decision may be more clearly stated that the Petitioner was prohibited from advancing his own interests at the expense of his beneficiaries.

In the Prudential Insurance Company case, the concern was with dealings with encumbrances on real property, which had established priorities among them, and there it was a relatively simple matter to determine what was junior and senior to that held in trust, but more whether the trustee by his actions and position had placed himself in a more advantageous position at the expense of his beneficiaries, and whether or not he had performed his duty in protecting the value of the trust estate.

In a case of this character, the niceties of the methods or devices used to achieve a result are not so important as are the results achieved and their effect upon the ones to whom the duty to protect was owed.

The Petitioner also advances the case of *Donnelly v. Consolidated Investment Trust*, et al., 99 F. (2d) 185, as being a conflicting decision. This is a decision of the First Circuit, and concerned the activities of the "trustees" of a holding company in the form of a Massachusetts trust. The question being whether such managers could purchase shares of the holding company and of a subsidiary, and receive liquidating dividends. The Court held that they could.

The "trust" involved was of course a "Massachusetts trust", which can be more properly regarded as a corporation, and its shares were dealt in on the Boston Exchange. The decision is in reality a holding that the managers of what amounts to a corporation, and who have no other duties to plaintiffs, may deal in, hold and purchase shares to control the organization. Here again the Court states the familiar doctrine already considered to the effect that a trustee cannot hold an interest in conflict with the trusts.

The Court found under the facts in the Donnelly case that there was no breach of the doctrine, and there is no conflict of decisions. Again we have an evaluation of the facts under an established doctrine. We again point out that the Petitioner here in reality seeks to have this Court make another evaluation of the facts in the case at bar.

III

CONCLUSION

The decision of the Circuit Court on the merits of the case at bar is eminently correct. From the statement of facts alone, we believe that it is apparent that the Petitioner did not act in good faith when he withheld information from the Respondents as to the financial condition of the ranch, of which the Petitioner was the sole manager, and when he thereafter actively misrepresented to certain of the Respondents the value of the shares of stock of the ranch corporation. He did not evidence good faith nor conform to the proper standards of conduct of a trustee when he thereafter purchased these controlling shares of stock at a price substantially less than their actual value or book value. He further violated his duty when, by the above device, he gained control of the ranch in his individual capacity, and by the same act reduced his beneficiaries from a position of equality with him to the position of a minority interest. It must further be remembered that when the trust was impressed upon the family ranch upon the death of the Respondent's father and husband, the ranch was being operated on a "fifty-fifty basis" as between the two

families, and not only were the relative interests equal, but they were undivided interests in land and in the business. It was these durable interests that the Petitioner converted by the incorporation of the ranch into the more perishable interests of stock holdings. The subject matter of the trust has really never changed, although there has been introduced into this family ranching enterprise the corporation form of doing business. Respondent believes that by reason of the conversion of his beneficiaries' interests into such perishable ones, it thereby became incumbent upon the Petitioner-trustee to exercise a higher degree of vigilance and a greater degree of circumspection in his dealings with this corporation, in which his own personal interest was equal to that of his beneficiaries, and of which corporation he was the sole manager. It is submitted that the fact of an incorporation of the ranch should not result or be used as a device whereby, intentionally or otherwise, the relative interests as between the trustee and his beneficiaries may be altered to the prejudice of the beneficiary.

By his actions in increasing his personal holdings and reducing the beneficiaries to minority interests, the Petitioner not only advanced his personal interest through his position, but he also reduced the value of the interests of his beneficiaries. It must also be observed that the Petitioner caused the investment to be continued in the ranching enterprise before the formation of the corporation, and continued it therein as stock holdings in a corporation. Therefore, he can not, as he has attempted to do, maintain that he could not purchase the Ferguson stock for the interests of the beneficiaries for the reason that it is not a proper investment. It is not a matter of a new investment, but involved a duty to protect the value of the existing investment, which Petitioner had continued in the enterprise. It must further be noted that this action seeks to protect the beneficiaries from the positive actions of the trustee advancing his personal interests, and does not involve a situation of mere failure to act.

As was clearly brought out during the trial of the action, there were at the time in question adequate funds available

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in each of the separate trusts to have enabled the Petitioner to have purchased a pro rata portion of the stock for each trust account. There were also funds in the estate of the deceased brother to have enabled the Petitioner, as Executor of the estate, to have purchased the stock to inure to the benefit of such estate. Similarly, there were adequate funds in the treasury of the corporation, of which the Petitioner was the sole manager, to have enabled it to have purchased the stock and to have retired, thus preserving the relative interests of the parties.

The undisputed facts in the record show that the Petitioner, in purchasing the Ferguson stock for his own interests, did not exercise the independent judgment, loyalty or discretion, to his *cestuis* as to conform to the standards of conduct required of a person occupying even one of the several fiduciary positions then occupied by the Petitioner. Respondents urge that the trustee should be held to account for the stock purchased by himself individually in such a manner that one-half will inure to the benefit of the Respondents, and one-half to the Petitioner individually, and that thereby the relative interests of the parties be maintained as they were when the trust was impressed on the ranch.

It is therefore respectfully submitted that this case is not a proper one for review by Certiorari in this Court, and that Petition for a Writ of Certiorari should be denied.

May 17th, 1947.

Respectfully submitted,

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